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BEFORE THE BOARD OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES AND ENERGY
IN AND FOR THE STATE OF UTAH

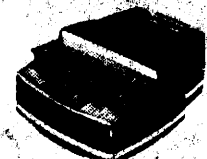
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IN THE MATTER OF AN ORDER TO)	ORDER TO SHOW CAUSE AND
SHOW CAUSE ISSUED TO CO-OP)	NOTICE OF HEARING
MINING COMPANY.)	ACT/015/025
)	
)	REPORTER'S TRANSCRIPT

* * *

BE IT REMEMBERED, that on the 28th day of October 1982 commencing at the hour of 4:30 p.m., a hearing was held before the Board of Oil, Gas and Mining in the above-entitled matter, and said hearing was taken before Ronald F. Hubbard, a notary public and certified shorthand reporter in and for the State of Utah (License No. 32), in Room 303 of the State Capitol Building, Salt Lake City, Utah.

* * *



A P P E A R A N C E S

Herm Olsen, Acting Chairman
Board of Oil, Gas and Mining

Edward T. Beck, Board Member

John L. Bell, Board Member

E. Steele McIntyre, Board Member

Robert Norman, Board Member

Cleon B. Feight, Director
Division of Oil, Gas and Mining

Ron Daniels, Deputy Director
Division of Oil, Gas and Mining

Carolyn Driscoll
Reclamation Legal Specialist

Joseph C. Helfrich
Field Supervisor

Everett Hooper
Reclamation Soils Specialist

Carl Kingston, Attorney
Co-op Mining Company

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1 P R O C E E D I N G S

2 * * * *

3 THE CHAIRMAN: Agenda Item 5, ACT/015/025.

4 MR. FEIGHT: This is in the matter of an order to
5 show cause issued to Co-op Mining Company as a notice of
6 hearing and an order to show cause, and it concerned mining
7 upon some areas that were believed to be unpermitted at the
8 time. The file indicates that legal notice has been given.

9 THE CHAIRMAN: Anyone here to speak on the matter
10 of the order to show cause?

11 MR. KINGSTON: Carl Kingston representing Co-op
12 Mining Company. I have two witnesses, Wendell Owen and
13 Dennis Hitt.

14 THE CHAIRMAN: Anyone else? All right. Carolyn,
15 are you handling this matter?

16 MS. DRISCOLL: Ron Daniels was going to do a sum-
17 mary. I think there is a memorandum that I can read from.

18 THE CHAIRMAN: All right. Why don't you do that?

19 MS. DRISCOLL: For speed and convenience I'll just
20 do a brief summarization; then if more detail is necessary,
21 we'll refer to the memo and correspondence that was sent to
22 the operator.

23 For several months it has been noticed by inspec-
24 tion and enforcement staff that the operator Co-op Mining
25 had been operating in four, and we designated five areas

1 that were unpermitted that mining activity was taken place
2 on the areas. No enforcement action had been taken, pri-
3 marily because this was something that we were trying to work
4 out with the operator.

5 Towards the end of September the operator, legal
6 counsel for the operator, Carl Kingston and several mem-
7 bers on the Commission staff met and discussed the four areas
8 that were unpermitted. At that time the operator was told
9 that modification to the plan should be submitted to the
10 Division to sufficiently get those four areas permitted and
11 that the plan and the modifications and all the information
12 necessary should be submitted by October 18; that no further
13 mining activity was to occur on those designated areas un-
14 til the areas had been properly permitted.

15 The operator has since that time tendered to the
16 Division two submissions concerning the modifications of
17 the four areas. Last week a letter went out to the opera-
18 tor identifying deficiencies in the initial submission.
19 EV can talk more about what happened on the second submis-
20 sion; but up to this point the submissions have not been
21 complete enough for the Division to give the operator a
22 permit.

23 So what we're requesting is that the permitting
24 process be completed, that the operator cease all activity
25 on the areas, that the Board make the determination as to

1 when enforcement action can be taken as far as issuing vio-
2 lations, and that the Board possibly consider a fine in the
3 area, for operating in four areas.

4 The four areas basically were construction of a
5 new road, development of an upper pad area that had been
6 previously undisturbed, equipment and non-coal waste dis-
7 posal along the main access road, disturbance and development
8 of a spring. And what it--a water spring?

9 (Discussion off the record.)

10 MR. BELL: You say the spring in Bear Creek area,
11 I guess that's a spring that water runs out of.

12 (Discussion off the record.)

13 MS. DRISCOLL: And the placement of the new scale
14 house that the operator was going to utilize.

15 (Conference)

16 And this is Ev Hooper.

17 MR. HOOPER: Everett Hooper, soil scientist.
18 since the action started, Co-op Mining Company has sub-
19 mitted two maps of the area that indicate the relocation
20 of the scale house and the scales themselves and the care-
21 taker building and development of the upper pad; but they
22 have not submitted any additional written information on the
23 means or methods of development.

24 Day before yesterday, I think it was, they brought
25 in a resubmittal supposedly for modification to their

1 interim plan for development of their pad area, their scale
2 house ends, and their scales. I briefly looked through it.
3 As far as I can see, it is a photocopy of their original mine
4 plan, which was found to be deficient in our initial ACR
5 in many areas. That's about where it stands right now.

6 MS. DRISCOLL: Is the information submitted to the
7 Division at this time sufficient to issue a permit on any
8 of these areas?

9 MR. HOOPER: No, not at this time. I've written
10 several letters indicating it is still efficient.

11 MS. DRISCOLL: I think unless the Board requires
12 more detail, that's all the staff has to say in terms of
13 summary.

14 THE CHAIRMAN: Are you asking the Board to order
15 that all mining in these nonpermitted areas stop until they
16 comply with the regulations?

17 MS. DRISCOLL: Yes.

18 THE CHAIRMAN: Is that right?

19 MS. DRISCOLL: That's right.

20 THE CHAIRMAN: Are you asking for anything else?

21 MS. DRISCOLL: Yes. We're asking for a directive
22 as to when the inspection enforcement staff can begin in-
23 spections, with the idea of issuing violations for being out
24 of compliance with the statute and regulations. To date the
25 operator has received no violations.

1 THE CHAIRMAN: You're not asking for a violation
2 today?

3 MS. DRISCOLL: We're indicating that that's an
4 option that the Board can consider, but we really have taken
5 no position on it.

6 THE CHAIRMAN: All right. Are there any ques-
7 tions of Carolyn or Everett Hooper relative to the items
8 listed on the order to show cause for what they're asking?

9 MR. McINTYRE: Yes. Mr. Hooper, will you go down
10 from A to E and summarize to us the unpermitted mining
11 activities?

12 MR. HOOPER: Which document are you referring to?

13 MR. McINTYRE: The order to show cause issued to
14 Co-op Mining Company.

15 MR. HOOPER: I haven't got a copy of that.

16 MS. DRISCOLL: I do.

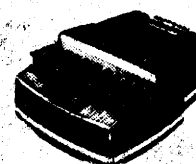
17 MR. McINTYRE: Would you go down that list and
18 explain to us briefly what each one entails?

19 MR. HOOPER: I'll be glad to to the best of my
20 ability. Or maybe someone else on the staff could do it.

21 MS. DRISCOLL: I think Ron has a statement that
22 might clarify some matters.

23 MR. DANIELS: Yes. It's mostly in the way of a
24 recommendation, if you're ready for that.

25 THE CHAIRMAN: Go ahead.



1 MR. DANIELS: Originally, before the additional
2 plan for the modification was submitted, I think it was yes-
3 terday or the day before, I was going to ask the Board to
4 take an enforcement action. And I'm making this mostly be-
5 cause I didn't assess any penalty on this. It didn't come
6 before me as the assessment officer, because we felt we
7 could get a little bit more strength in an order from the
8 Board.

9 What I was going to ask you for was three things:
10 a fine for this violation, and suspension of the operations
11 on these areas, which I think Carolyn has mentioned, and an
12 admonition that inspections would take place between now
13 and a deadline which I thought nominally should be the 15th
14 of November, and the complete plan should be submitted,
15 during which violations could be issued and would be issued
16 by the staff.

17 I think that we've seen somewhat of a showing of
18 good faith, and we've got a plan of sorts in the day before
19 yesterday.

20 So in those three recommendations, what I would
21 say is to change one of them, change the first one to a
22 fine which would be suspended upon a submission of a com-
23 plete and accurate plan for modification. That fine would
24 be pending, and if a complete and accurate plan weren't
25 finished by the 15th of November it would actually be

1 levied.

2 THE CHAIRMAN: All right. Now, we might as well
3 consider this. At the same time, and in conjunction with
4 the next order to show cause--I don't now--not an order to
5 show cause, but it's an application for a review of hearing
6 by Co-op regarding an issued mining violation, which I under-
7 stand--that may be misdesignated, because I understand there
8 hasn't been a mining violation issued. Is that right?

9 So really an order to show cause on a hearing--

10 MS. DRISCOLL: No. There has been a violation
11 issued.

12 MR. KINGSTON: It's in a different area.

13 THE CHAIRMAN: It's unrelated?

14 MR. KINGSTON: It's unrelated, and I don't think
15 we can join those two and discuss them together.

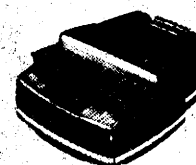
16 THE CHAIRMAN: I thought you were asking us to
17 undo what we hadn't done yet. All right. We'll not con-
18 sider those together.

19 Is there any other question?

20 Now, it's time for Mr. Hooper to go ahead and
21 answer your question.

22 MR. HOOPER: Could you please restate the ques-
23 tion again?

24 MR. MCINTYRE: I asked if you will briefly des-
25 cribe to us what work is entailed through the unpermitted



1 mining activity that has occurred from A to E as listed in
2 the matter of an order to show cause to Co-op Mining Company.

3 MR. HOOPER: All right. Item No. A, the extension
4 of a road which intersects the Huntington Canyon Highway.
5 The original haul road intersected Huntington Canyon in kind
6 of a blind corner; and during a period of time, the way I
7 understand it, Co-op Mining had been negotiating with
8 Emery County and the BLM to change location of the haul
9 road.

10 During an inspection or just an on the ground
11 tour a few weeks ago, we noticed that the haul road new
12 construction, they were going to come out in a different
13 intersection to take away a blind corner on the Huntington
14 Canyon Road. At this time the Division had not been con-
15 tacted, or/any idea of what Co-op Mining Company was intend-
16 ing to do down there.

17 So at that time that's where the question of the
18 intersection of the road question came up, because it was
19 a new disturbance at the time we considered the mine site.

20 Since then we have received a letter from Emery
21 County stating that it is a county road and there are still
22 some issues to be resolved with Co-op over the road; but
23 they are going to consider it as a county road, and it is
24 off, as far as we can tell, off the permit area, the area
25 of disturbance for the extension of the haul road.

1 MR. McINTYRE: That is no matter of concern for
2 us at all, then?

3 THE CHAIRMAN: Are you saying that this extension
4 that you're talking about which constituted part of the vio-
5 lation is now no longer part of the violation because the
6 county has picked it up?

7 MR. HOOPER: I think that's part of the issue that
8 is still being resolved is how the maintenance and every-
9 thing is going to be taken about until that is--

10 THE CHAIRMAN: Has the county picked it up or
11 not? Not yet?

12 MR. HOOPER: Not yet.

13 MR. HITT: It was theirs to start with. They came
14 in and picked it up--

15 THE CHAIRMAN: We're asking him. You'll get your
16 turn. How long of a road are we talking about?

17 MR. HOOPER: What? A quarter--a third of a
18 mile--something to that effect. A half a mile maybe at the
19 most.

20 THE CHAIRMAN: At this point you don't know whether
21 the county has picked it up or not?

22 MR. HOOPER: I have a copy of a letter from the
23 county, if you want their wording. They're going to pick
24 it up, but there are some issues to be resolved before the
25 actual--I don't know what words to use--

1 THE CHAIRMAN: Shared maintenance costs and stuff
2 like that? Paving?

3 MR. HOOPER: I don't think it will be paved, but
4 I'm not sure. They didn't mention in the letter which
5 issues were unresolved. They just said there were several
6 issues that were still unresolved as far as the road goes.

7 THE CHAIRMAN: Go ahead. Go on with No. B.

8 MR. HOOPER: Now, the road from the upper portal
9 to the uppermost storage pad is on the permit area. I
10 haven't actually walked the road myself, but it is a new
11 disturbance on the permit area that was not permitted. And
12 so that was the reason behind Item No. B, additional dis-
13 turbance that was unpermitted.

14 MR. McINTYRE: How long is this road?

15 MR. HOOPER: I said I haven't actually walked the
16 area of the new road. I've seen the cat up there working
17 it, but I haven't actually walked it.

18 MR. McINTYRE: A quarter of a mile, a half a
19 mile?

20 MR. HOOPER: I could not tell you.

21 THE CHAIRMAN: Well, we can ask them. They will
22 know. Go ahead.

23 MR. HOOPER: And then Item C, the uppermost stor-
24 age pad. The way I understand it is that this was just an
25 extension of the road. I'm not even sure if the road was



1 permitted in the first place. But the uppermost storage pad,
2 it's basically the same thing. A new disturbance that was
3 unpermitted. That's where Item C came from.

4 Again, I haven't been up on the ground at the
5 storage pad. The maps that have been submitted depicting
6 the areas are lacking, and you can't really make a determin-
7 ation of the extent, the size, or the exact location of the
8 pad.

9 MR. McINTYRE: Is this pad to store coal?

10 MR. HOOPER: I think it's for non-coal, like
11 equipment, mining equipment, and material for use in the
12 mine.

13 THE CHAIRMAN: Anything else on that?

14 MR. HOOPER: No. And the non-coal waste and equip-
15 ment along the main haul road and the access road. This was
16 initiated because the boundary of the permit area is not
17 precisely laid out on the ground. There is no perimeter
18 mark as to his permit area. And he stored some, you know,
19 mining equipment along the road between the stream and the
20 road.

21 At that time it was requested that this equipment
22 be removed from the access road. That's where Item D arose.

23 And then Item E, this one I have walked and been
24 over to. This is another question that at the time was the
25 perimeter mark for the permit area. At the time the spring

1 was sought to be developed within the permit area.

2 As far as I could tell from visual inspection, it
3 was a new development. They had tapped into the base of the
4 sandstone cliff, built a collector box, and there were at
5 least three PVC water lines coming out of this collector
6 box. Two went underground north, and one went south. One
7 went north, and the other was an overflow. That's what
8 brought my attention to it in the first place, because there
9 was water running off at the time what I thought was a
10 permit area. And it came from the overflow on this spring
11 development.

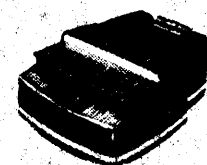
12 We went up and looked at it again later on to
13 resolve the issue of the perimeter markers, and at that
14 time we determined that it was essentially off of the--that
15 the spring development itself was off the permit area, but
16 as far as where the PVC lines lead to, that still is in
17 question, whether they lead to the permit area or not.

18 THE CHAIRMAN: Do you have further questions of
19 these five items?

20 MR. McINTYRE: No, not from him. I'd probably like
21 some answers from the Co-op.

22 THE CHAIRMAN: Any other questions of Carolyn or
23 Mr. Hooper or Ron? Mr. Kingston, do you want to ask these
24 people anything?

25 MR. KINGSTON: In the interest of time, I don't



1 think so.

2 THE CHAIRMAN: All right. Anything else,
3 Carolyn?

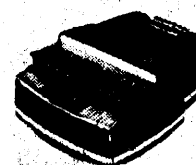
4 MS. DRISCOLL: Not from staff. Thank you.

5 THE CHAIRMAN: Mr. Kingston, go ahead.

6 MR. KINGSTON: Let me just address the areas that
7 the Division people have previously addressed; and then if
8 we need testimony from Mr. Owen or Mr. Hitt, we get that
9 from the members of the Board.

10 Regarding the road at issue, this has been a
11 county road for many, many years. As the witness testified,
12 the point where this road joins the main highway is on a
13 blind curve, and it was at much of the request of the county
14 and other users of the road that it be changed, as it was
15 the desire of Co-op Mining Company. Of course, Co-op Mining
16 Company will be using that road rather heavily, and they
17 don't want an accident where someone loses their life. So
18 they were more than happy to change the way the road joined
19 the highway to eliminate that blind curve, and they have
20 done that.

21 The part that's been changed is, I would say, a
22 mile from the permit area. It's always been a county road.
23 It's still a county road. The county has agreed to main-
24 tain the road, but they did ask us, since we are probably
25 the principal user, to go in and make a change.



1 So it would be our position quite clearly that's
2 not within the parameters of what the Division here ought
3 to be complaining about.

4 THE CHAIRMAN: Is it your position that the change
5 in the road occurred as a result of an initiative by the
6 County, as opposed to an initiative by Co-op, which would
7 determine whether you're doing the county a favor which
8 peripherally benefits you, or whether you're extending your
9 mining activities without a permit?

10 MR. KINGSTON: Well, I would have to be frank to
11 say it was probably joint. We had the sheriff up there to
12 check it out. The road, by the way, is entirely on BLM land,
13 not on Co-op Mining Company's land, or the lessor of the
14 land the Co-op Mining Company uses. It's well off the per-
15 mit area. It's used by Huntington City. It's used by a
16 water district down there that has a spring they have to
17 service in the area. It's used by the general public.

18 They had asked us to change the road and to block
19 off the existing road. Now, what it's going to do, if we're
20 given a cease and desist order, it's going to put Co-op
21 Mining Company out of business. That's the only way to
22 join the highway.

23 Now, when we had the meeting on September 24, or
24 whatever date it was, the indication I received was that we
25 could--well before the meeting, I guess we, we received a

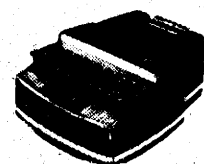
1 letter saying we could continue to use the old road, but
2 they didn't want us to use the new road until we had given
3 them evidence that it was a county road.

4 Now, we submitted a letter from the county. We
5 also have correspondence from BLM indicating that it's
6 across their land, but they have given the right of way for
7 the road to be changed. But now the old road has been
8 blocked off, I guess we can go in and clear the boulders
9 away and use it, but if we do somebody is going to be killed.
10 It's a very, very dangerous blind corner.

11 MR. BELL: Maybe I can clarify that a little bit.
12 It has been the policy of Emery County to ask the operators
13 in some cases to build a road where they didn't have suffi-
14 cient funds to do it. Thereby, they would take over the
15 maintenance and the upkeep after that point, because it has
16 been done in other places.

17 And so I can understand the problem that they were
18 asked to do this by the county, because that was part of the
19 policy.

20 THE CHAIRMAN: The question I have--I mean, it's
21 an interesting question. The construction of that road, is
22 it a part of the mining activity, or is it a part of a
23 county process to expand the road system? And in this case,
24 principally built by the operator because he is going to be
25 the principal beneficiary?



1 What I'm wondering, Mr. Kingston, are you sug-
2 gesting that you were not required to file an amendment to
3 your mining plan for the construction of this road because
4 it wasn't a part of your mining plan?

5 MR. KINGSTON: That's our position exactly. If I
6 might add, Beaver Creek is going to be using that road.
7 They are going to be mining in the next canyon. They will
8 be taking off from that same road that cuts off the high-
9 way up to that canyon. They will probably be mining ten
10 times the coal that Co-op Mining Company will.

11 THE CHAIRMAN: Isn't that part of the mining plan,
12 though? The use of the road is for mining?

13 MR. KINGSTON: Well, where do you draw the line?
14 We haul coal miles and miles in trucks. It's clearly a
15 county road. It's not a private road by any stretch of the
16 imagination.

17 THE CHAIRMAN: Maybe that's where I'm confused.
18 I thought you said the county wasn't taking it over until
19 you were done with your mining.

20 MR. KINGSTON: No. They are going to continue to
21 maintain the road as of the time the road is finished, and
22 it is finished now.

23 THE CHAIRMAN: They are taking it over?

24 MR. KINGSTON: And they are maintaining it.

25 MR. McINTYRE: As the next county commissioner,



1 maybe I can explain what's happening. As Mr. Bell said, the
2 county got Co-op to agree to construct the road, because
3 they don't have the funds to do it. So after the road is
4 constructed, they adopt it and put it on their county system.
5 From then on they will receive funds under the Road Class
6 B what money--whatever it is--to maintain it.

7 MR. KINGSTON: That's correct. And the old road
8 has always been on the county system.

9 THE CHAIRMAN: All right. That helps. But maybe
10 the staff needs to respond, because this is probably a long
11 term multiplecompany, multiplan problem. Haven't you ever
12 faced this before?

13 MR. DANIELS: Maybe I should comment on my recom-
14 mendation. I didn't mean my recommendation to include the
15 road. I thought we had settled the road problem before.

16 THE CHAIRMAN: But I need to be educated. Is this
17 an extension of the mine plan, or is it a county proposal
18 for which they shouldn't be cited for failure to amend their
19 plan?

20 MR. DANIELS: We've generally held that a public
21 road is just that. It's the responsibility of the county
22 or the state or whatever political entity wants to take that
23 over. It isn't the operator's responsibility.

24 THE CHAIRMAN: And the confusion here may have
25 grown up from the fact that the county was less than clear

1 in their letter saying it is a county road "and it is ours,
2 and we will maintain it"?

3 MR. DANIELS: I would think so.

4 MR. NORMAN: I suggest that the staff obtain those
5 two letters, a copy of those two letters from the BLM, as
6 has been brought out, and the county, too, just for the file.
7 That would just solve the whole problem.

8 THE CHAIRMAN: And I think all I'm asking, is the
9 staff comfortable in withdrawing an objection, or are they
10 not? Do they want to continue because they feel it's a
11 misinterpretation on the issue of "A" the extension of the
12 road?

13 MR. HELFRICH: I think it would benefit the staff
14 if they knew where the county road stopped and the private
15 road started.

16 MS. DRISCOLL: We're not clear where the county
17 road ends and Co-op's road starts. And that clears the
18 town, because the operator is responsible to maintain the
19 operator's road.

20 THE CHAIRMAN: We can resolve it by saying to the
21 county, "You tell us on a map exactly where yours ends," and
22 the Co-op then has the additional road beyond where the
23 county says it's theirs, which they have not filed an
24 amended plan on. And then they could file an amended plan,
25 is that right?

1 MR. KINGSTON: I would think so.
2 THE CHAIRMAN: All right.
3 MS. DRISCOLL: We have no objection.
4 MR. KINGSTON: I think the county is the only one
5 that could indicate where their road goes.
6 MS. DRISCOLL: That's what we're lacking.
7 THE CHAIRMAN: What I'm saying, Mr. Kingston, is
8 if the county disclaims this road, then you have to file a
9 mining plan.
10 MR. KINGSTON: I'll be happy to do that, because
11 I'm sure the county is going to claim it. We have been
12 through that.
13 THE CHAIRMAN: Fine. That just needs to be done.
14 MR. KINGSTON: Then is it going to be the Division
15 that will request that from the county, or do you want some-
16 thing more from us? Now, we do have a letter from the
17 county.
18 THE CHAIRMAN: I think the staff can confirm with
19 the county what the county is taking, and that should re-
20 solve it, as long as you haven't got an additional road
21 beyond what the county says is theirs for which you haven't
22 filed an amended mining claim.
23 MR. KINGSTON: That's fine.
24 THE CHAIRMAN: All right.
25 MR. KINGSTON: No problem with that at all.

1 THE CHAIRMAN: Now, you started on A. Now go to
2 B.

3 MR. KINGSTON: I may have these mixed up. I think
4 I wrote these down as Carolyn read them. The next area I
5 have is the upper pad area. Again, we did discuss all of
6 these things in the September 24 meeting, and the result
7 from that meeting, as far as my understanding goes, was that
8 we would submit additional information. We agreed that un-
9 til that information had been submitted we would not conduct
10 any further mining operations in those other areas, because
11 we can continue to mine coal without further disturbing
12 those areas.

13 But regarding the upper pad area, there was a con-
14 cern, because over a year ago Co-op Mining Company was
15 directed by the Division to install a culvert up in that
16 area. And then, of course, we get the problem, the Division
17 saying that we are not permitted to work there, so we can't
18 construct the culvert.

19 We explained that to them with the impending
20 weather situation. The Co-op Mine, by the way, is quite
21 high in the mountains. They have a terrific problem with
22 snowfall in the winter.

23 Unless the culvert goes in fairly soon, probably
24 we would not be able to install a culvert until next spring
25 or early summer. So the Division's direction from the

1 meeting that I got was that they would review the informa-
2 tion and data they had on the water flow from the area in
3 the pad--or, in the pad area. And they would allow us to
4 commence construction of that culvert when they told us how
5 large a culvert would be required.

6 Now, we received directions from the Division ask-
7 ing us, I think, to put a 38-inch culvert in, and that part
8 I think we're working on. Other than that, we haven't been
9 on the area, and we don't intend to go on the area until we
10 have cleared up the problem with the Division.

11 THE CHAIRMAN: The question I have, is the staff
12 saying that you built an upper storage pad prior to the
13 time you amended your mining plan to do so?

14 (Ms. Driscoll nods head.)

15 MR. KINGSTON: I think that's what the contention
16 is.

17 THE CHAIRMAN: Did you do that?

18 MR. KINGSTON: Well, again, I've talked to
19 Wendell Owen about this. His contention is that he sub-
20 mitted in earlier letters and in correspondence to the
21 Division that that would be done.

22 THE CHAIRMAN: But you don't amend a mining plan
23 through letters, do you?

24 MR. KINGSTON: Well, he had some conversations,
25 and you may require testimony on this. In discussing both



1 with the inspector and with Mr. Smith, rather than request
2 a change on every little thing, just submit it as part of
3 your final plan. They're working under an interim plan now.

4 Maybe what we ought to do is have Mr. Owen clarify
5 that particular point, because I can see it's a concern
6 of members of the Board.

7 THE CHAIRMAN: Let me explain what the concern is,
8 and that is that somebody goes ahead and mines without getting
9 permission, and then if they get caught, they come in and
10 say, "Well, it's okay." If that didn't happen, then, fine,
11 we shouldn't be talking about it.

12 MR. KINGSTON: The only problem that I think the
13 Division is pointing out, it's not part of the overall
14 mining plan. It's an area which is an extension of the
15 road that was on the plan and an area where they were going
16 clear off and store non-coal waste, metal, machinery, other
17 things.

18 So it's not going in and mining without receiving
19 a mining plan or approval prior to the activity.

20 THE CHAIRMAN: When was the upper storage pad
21 built?

22 MR. KINGSTON: Mr. Owen, do you know?

23 MR. OWEN: Yes. The upper storage pad is not yet
24 completed. The area we're talking about is actually a
25 part of the upper pad. Originally it was our intention

1 that the plan would be in that area we're talking about.

2 I think the inspectors that were there that time
3 were aware of that, that that was part of the entire upper
4 pad area.

5 Now, when we had the survey made from underground,
6 we found out that it was impractical from the standpoint of
7 the underground part to put the fan at that point. So we
8 changed the position of the fan.

9 Now, incidentally, I don't know if the Board is
10 aware of this, there is an existing mine that had been there
11 for years and years. It's the old Bear Canyon Mine. There
12 is already underground workings there. After the under-
13 ground survey was made, it was determined that it was more
14 feasible to put the fan on the old portal that was already
15 there.

16 Part of this, in other words, the substation is
17 the next thing. And then as you go on around the point
18 there, that's where the fan was going to go, and in the
19 original that was understood to be part of the pad. It
20 wasn't that we went out and disturbed a new area. And we
21 had even started to work on this pad at the time before we
22 had that survey when we still thought it was going to be
23 the portal.

24 Now, the modification was that it is no longer the
25 fan portal that is going to be around there; but because of



1 the lack of space and the steepness of the mountain, there
2 is no way we can get supplies up there. We're still having
3 to haul them up, transfer them from the truck to bring them
4 in to a small truck to take them up there.

5 THE CHAIRMAN: Wait a minute, Mr. Owen. When did
6 you begin the work on the upper storage pad?

7 MR. OWEN: Two years ago.

8 THE CHAIRMAN: When was your mine plan submitted?

9 MR. OWEN: Well, the original mine plan was
10 submitted then.

11 THE CHAIRMAN: Did that original mine plan include
12 the disturbance that you started on this upper storage pad
13 two years ago.

14 MR. OWEN: Yes.

15 THE CHAIRMAN: All right. Staff?

16 MR. HOOPER: I was put on as mine plan within
17 the last six months. So as far as two years ago, I can't
18 answer the question.

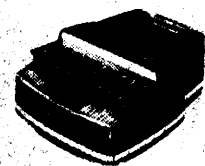
19 THE CHAIRMAN: But you've read the mine plan?

20 MR. HOOPER: Yes.

21 THE CHAIRMAN: Does it include a disturbance for
22 this area that we're calling the upper storage pad?

23 MR. HOOPER: To the best of my recollection, no.

24 THE CHAIRMAN: If we don't know that, we can't
25 really talk about it now? That's something you have to



1 show us.

2 MR. HOOPER: Yes.

3 THE CHAIRMAN: So it either constitutes a viola-
4 tion or it doesn't.

5 MS. DRISCOLL: I think that we are prepared to
6 show that the staff has gone through the mine plan and that
7 we can bring the mine plan over; but this is not addressed
8 in the mine plan.

9 THE CHAIRMAN: All right. But the function of
10 the Board on an order to show cause is to have the staff
11 present evidence that there has been a violation; and if you
12 don't know there has been a violation, then we can't find
13 one.

14 MS. DRISCOLL: All right. The other people who
15 have done the mine plan review have all gone through the
16 mine plan. No one has yet found that it has been sub-
17 mitted. There is a possibility it may have been lost or
18 misplaced, but it is not in the Division records now. It may
19 have been submitted.

20 THE CHAIRMAN: You mean a recommendation that this
21 be disturbed or that the mine plan includes a disturbance
22 for this?

23 MS. DRISCOLL: But it is not part of the record
24 that is in the Division offices. It is not part of the mine
25 plan. And Mr. Owen disagrees.



1 THE CHAIRMAN: But the burden is on you to prove
2 that it is not there, is it not? Is it not up to you to show
3 that there has been a violation rather than to him to show
4 that there hasn't been?

5 MS. DRISCOLL: Well, I know. But the mine plan
6 is several volumes. We didn't duplicate it.

7 THE CHAIRMAN: You only need to duplicate that
8 section that demonstrates an absence of disturbance for this
9 area.

10 MS. DRISCOLL: All right.

11 THE CHAIRMAN: Maybe we can continue that, because
12 I don't think--

13 MS. DRISCOLL: We have a map that we can bring over
14 that will show that it is not in the plan.

15 MR. McINTYRE: Can I add something on this in
16 regards to the permitting?

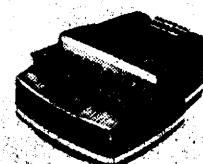
17 THE CHAIRMAN: Well, we're still trying to hurry.
18 I think. It is five o'clock.

19 (The Board confers among themselves.)

20 MR. OWEN: Some of these things I have added in
21 the modification. Some are already there.

22 THE CHAIRMAN: Is that the original plan, Mr.
23 Owen?

24 MR. OWEN: Some of these have been put in the
25 modification. I don't want to take up the Board's time



1 The thing I was trying to say there is that on this, and in
2 preparing the application and in preparing these things my-
3 self, we haven't had the funds to go out and hire these
4 consulting firms to do all this work for us. These big
5 companies have been able to do this. I have to the best of
6 my ability been able to gather these things together. Some-
7 times I haven't understood, and I have been lacking certain
8 things. But definitely it was discussed, and, like I said,
9 we were even told to hurry and get that culvert in.

10 The inspectors looked at it. We were working on
11 it. At that first time, like I say, it was going to be the
12 thing there--

13 THE CHAIRMAN: Mr. Owen, hold up. The issue it
14 seems to me--and I need to ask the Board what we want to do
15 on this--the issue is whether or not you are in violation
16 of your mining plan, because, if you are the financial
17 stability of the company has nothing to do with it. I can't
18 afford to go out and mine, either. I don't have any more
19 right to come in here and ask the Board to forgive my viola-
20 tions than you do to come in and ask them to forgive your
21 violations, if there were any.

22 But before we ever get to that, it seems to me that
23 the staff needs to demonstrate a certain level of proof
24 that there has been a violation. That's what I need to ask
25 the Board about.

1 I don't know. Can we accept as a Board the repre-
2 sentations that the violations that we see, a, b, c, d, and
3 e are violations, or do we need the proof? I don't know yet.
4 Tell me.

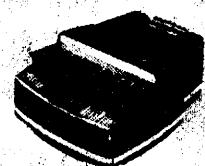
5 MR. NORMAN: I think that the staff, even though
6 they might not have a camera, and they are expensive, but
7 they ought to be able to--whoever goes out there should be
8 able to make a little sketch of what the plan is, so it would
9 be in the file so we can see and compare what we're talking
10 about here.

11 MS. DRISCOLL: I'm sorry to interrupt. We have
12 a map, and we'll send someone to get it. We were just try-
13 ing to save time, but we'll go get the map.

14 MR. McINTYRE: Let me make a recommendation. I
15 recommend that the staff and Mr. Owen get together and bring
16 up a mine plan to date. It seems as though it has already
17 been started.

18 THE CHAIRMAN: Maybe what you mean by the recom-
19 mendation--or, if it isn't, maybe I can make a recommenda-
20 tion, too. It's supplementary to that. There seems to be
21 a question of fact as to whether or not the violations,
22 the alleged violations described here constitute a devia-
23 tion from the mining plan.

24 Maybe between even today and tomorrow, for which
25 we will be here anyway, you can get together and look at



1 that mining plan between you all and decide whether it is
2 in or out. If you can tell by looking at it that it is in,
3 you know it's not a violation. If you can tell by looking
4 at it that it is out, you know it is a violation. If you
5 can't tell, then it is a question of fact, and you can
6 come back here and say, "We think it's in," and "we think
7 it's out." And then we will decide. And that way maybe we
8 can, before it even gets to us, the presence or absence of
9 a violation can be determined between you two.

10 MS. DRISCOLL: Well, we did that at the
11 September meeting, but we will gladly go do it again.

12 THE CHAIRMAN: Are you saying--did you pull out
13 the mining plan?

14 MS. DRISCOLL: Yes. And we pulled out the maps.

15 THE CHAIRMAN: Mr. Kingston?

16 MR. KINGSTON: I don't believe we had the plan
17 there.

18 MS. DRISCOLL: We didn't have the plan. We had
19 the maps.

20 THE CHAIRMAN: Well, can you maybe do that be-
21 tween now and tomorrow?

22 MS. DRISCOLL: Sure.

23 MR. KINGSTON: We'll be happy to.

24 THE CHAIRMAN: We can go on to the next one. We
25 don't want to dodge it. My position is, and I think



1 you've heard my position, I don't want to see mining done
2 unless it's approved under the mining plan. That doesn't
3 mean you just go ahead and do it and then you wait until
4 they find it; but if it's in the mining plan, then you roll
5 ahead and educate these guys that it is in the mining plan.

6 MR. MCINTYRE: Well, if it isn't in the mining
7 plan, can't they put it in?

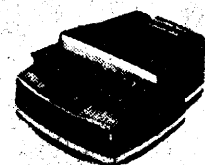
8 THE CHAIRMAN: Yes. But not post facto. They
9 can't go ahead and run willynilly in violation of the min-
10 ing plan and then say, "Now we'll make our application, and
11 everything is okay," because it's not, at least in my mind--

12 MR. BELL: The violation can still be committed,
13 and that doesn't stop it from getting it in the plan and
14 getting it up to date.

15 THE CHAIRMAN: Sure. Absolutely.

16 (The Board confers among themselves.)

17 THE CHAIRMAN: Is that all right if we do that?
18 Just continue it? I'm talking about until tomorrow. If you
19 can resolve it by tomorrow, fine. If you have to go until
20 November 30, that's fine, too. But I want to make sure we
21 take care of it, so that there isn't mining being done in
22 violation of the plan and (2) if there has been and if there
23 is some cessation order that should occur because of that,
24 then that can issue. But I'm not sure we're ready to deter-
25 mine any of that right now.



1 MR. BELL: So that's it. We'll see you tomorrow.

2 THE CHAIRMAN: So between now and tomorrow, find
3 that out.

4 MR. KINGSTON: Did you want to go over the other
5 areas tonight?

6 THE CHAIRMAN: Not the other areas. That's some-
7 thing in terms of this order. A through E, no.

8 MR. KINGSTON: Did you want to adjourn, or did
9 you want us to go ahead with the other areas tonight?

10 THE CHAIRMAN: Are you talking about Agenda Item
11 No. 6?

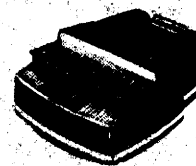
12 MR. KINGSTON: No. I'm still going over the
13 spring and the scale house.

14 THE CHAIRMAN: No. I want you to try to determine
15 whether or not any of that's in the mining plan. If it's
16 not, then it may be a violation. I might as well address
17 them all at the same time.

18 MR. KINGSTON: So the rest of this particular
19 cause will be continued until tomorrow?

20 THE CHAIRMAN: Yes. I want you to look at all of
21 those. And if you can't do it by four tomorrow, we'll put
22 it on the 30th.

23 But, Agenda Item No. 6, Cause No. ACT/015/021,
24 et al, let's go ahead with that one.
25



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33 and 34

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SALT LAKE CITY, UTAH, FRIDAY, OCTOBER 29, 1982, 1:30 p.m.

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3

THE CHAIRMAN: Let's reconvene. The first item on the agenda is item number five, continued from yesterday, Cause No. ACT/015/025. We've already done the preliminaries. So, Carolyn, go ahead and start.

7

MS. DRISCOLL: At this time I'd like to have Joe Helfrich, Ev Hooper, Jim Smith sworn in, please.

9

(Three witnesses were duly sworn to testify.)

10

MS. DRISCOLL: The Board will look, please, in front of them and find three exhibits that have been presented. The first is a letter dated October 13, 1982. That also includes a copy of the interim plan that was submitted by Co-op Mining Company, who is the operator in this case.

16

The second document is a letter dated October 5, 1982, to the operator indicating the four areas that were determined to be unpermitted.

19

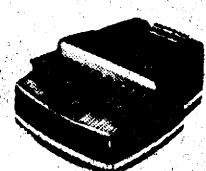
The third document is a letter from the Division to the operator dated October 25, 1982. This document reviews and describes the inadequacies in the modifications that have been submitted to date.

23

Ev will go to the blackboard and show you sequentially the maps and the dates that the maps were submitted and show you what is in the interim plan, what the operator

25

second



1 has been permitted to do, and also indicate what the
2 operator has been doing. That will, we hope, establish a
3 prima facie case that the areas identified and discussed in
4 the documents 2 and 3, the two letters, are unpermitted
5 and, therefore, a violation.

6 EVERETT HOOPER,
7 called as a witness on behalf of the Division of Oil, Gas
8 and Mining, being first duly sworn, testified as follows:

9 THE WITNESS: The first map here was submitted
10 with an interim plan dated March 14, 1979. This is the
11 area in question.

12 If you notice--if you can see--probably you can't
13 see from that far away--but there is no projected distur-
14 bance in Section 26 or in Section 24. It is submitted
15 March 14, 1979 with the interim plan.

16 In December of '79 they sent in another map,
17 Co-op, basically the same thing, except they redesigned
18 their sediment ponds and extended the road, a series of
19 switchbacks that comes up this way into Section 24. But,
20 again, there was no submittal or no proposed disturbance in
21 Section 26.

22 These maps here were submitted with their perma-
23 nent mine plan in March of '81. This is the first submittal
24 that indicates that they were going to go into Section 26
25 or 3; and up to this time the only permit that had been

THE WITNESS / MR. HOOPER
↓

1 approved was the interim plan.

2 THE CHAIRMAN: What was the date? '81?

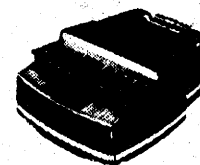
3 THE WITNESS: March 31, 1981. And it was in
4 September members of the staff were on site and noticed
5 additional disturbances in the mine, myself personally.
6 This area here into Section 26. I can't remember the exact
7 date, but it was in September of this year.

8 So consequently, all these events led up to the
9 meeting that was held on October 4, 1981, to bring Co-op
10 Mining Company in and try to straighten out some of the
11 areas that were vague and try to get them permitted--or,
12 into compliance with a permit.

13 MR. KINGSTON: That meeting was October 4 of 1982,
14 was it not?

15 THE WITNESS: '82. Excuse me. At that time we
16 asked for some maps and other information about the proposed
17 disturbance for the scale house, the scales, and the upper
18 pad. And one thing I didn't point out. On their interim
19 permit maps they do not indicate, as they do on their per-
20 manent mine plan, the scale house down here at the lower
21 quarter-quarter section of Section 25.

22 So on October 18, the Co-op submitted this map
23 here that shows the road going into Section 26 and the
24 subsequent disturbance of the pad that up to this time had
25 not been indicated on any map at all. This is the pad in



1 question (indicating). Again, it doesn't submit any informa-
2 tion on the scale house or location of the scales at this
3 end.

4 On the 25th of October, 1982, this map was sub-
5 mitted which depicts the area down in here, the lower section
6 of Section 25; and it does depict the scale house, the
7 scales, and a--let's see, this one--yes--and a proposed
8 realignment of the road over here.

9 The original road ran through here, and they were
10 going to realign it. And there had been previous distur-
11 bances in this area, and in the interim plan they had pro-
12 posed no disturbance according to their maps that were
13 presented earlier.

14 MR. BELL: I think as long as you're talking about
15 two mine sites, which you are, you should identify Bear
16 Creek Canyon and--unless you are only talking about one.

17 THE WITNESS: This is all Bear Creek Canyon.

18 MR. BELL: Just a realignment?

19 THE WITNESS: Yes. The maps do not in their sub-
20 mittal of their permanent mine plan, they show the road
21 intersecting the section corner here for 23, 24, 26, and 25.

22 In their submittal on October 8, 1982, it does
23 not. They indicate that it drops down below the section
24 corner so that there is a discrepancy in between these two
25 submittals, let alone the original interim permit.



1 This is the first of detailed maps of the scale
2 house and scale building. And they have the caretaker
3 building.

4 Any questions?

5 Q (By Ms. Driscoll) Mr. Hooper, did you talk with anyone
6 from the Emery County Board of Commissioners concerning the
7 newly developed road?

8 A Yes, I did.

9 Q What were you able to ascertain?

10 A I talked to Mr. Hunter--

11 MR. KINGSTON: We're going to object to hearsay,

12 THE CHAIRMAN: Objection overruled. It is hearsay
13 but we traditionally have not been bound by the strict rules
14 of evidence. We permitted and have permitted hearsay
15 throughout this hearing, and it bears on the subject matter
16 that was brought up by yourself in yesterday's hearing.

17 A Yes. I talked to Mr. Hunter of the Emery County
18 Commission. He indicated to me that in July of '82, Co-op
19 Mining Company approached Emery County for realignment of
20 the access road to Bear Canyon. And at that time he indi-
21 cated that it was a good idea due to safety factors. But the
22 county wanted to go through engineering design and the water
23 intercept of Bear Creek. And later on, Co-op approached the
24 BLM for the same reason, to realign the roads.

25 And as of this time, there has never been a formal



I heard to
I heard to

1 permit issued to Co-op Mining Company to construct that
2 road. The county still has it on hold. Due to engineering,
3 they want to check out the engineering. And subsequently,
4 the BLM has Co-op into trespass, because they have not got
5 legal permission to construct the road on their land.

6 And when Emery County formally files the required
7 documents to the BLM for construction, then the trespass
8 will be withdrawn.

9 Q (By Ms. Driscoll) Under the interim permit approval,
10 was this area permitted to be disturbed?

11 A No.

12 Q The order to show cause discusses five areas. Were
13 you able to find any of those five areas as being permitted
14 under the interim plan?

15 A No.

16 MS. DRISCOLL: That's all I have of this
17 witness.

18 THE CHAIRMAN: Cross-examine?

19 CROSS-EXAMINATION BY MR. KINGSTON

20 Q Did you discuss the road situation with anyone other
21 than Mr. Hunter from Emery County?

22 A No, I haven't.

23 MR. KINGSTON: No other questions.

24 THE CHAIRMAN: What's Mr. Hunter's position?

25 MS. DRISCOLL: Mr. Hunter is the administrative



assistant

1 assistant of the Emery County Commission. There is a letter
2 from Mr. Hunter dated October 13 to Mr. Dana of the Division
3 that's been submitted.

4 JIM SMITH,
5 called as a witness on behalf of the Division of Oil, Gas
6 and Mining, being duly sworn, testified as follows:

7 DIRECT EXAMINATION BY MS. DRISCOLL

8 Q Mr. Smith, are you the author of the letter dated
9 October 25, 1982?

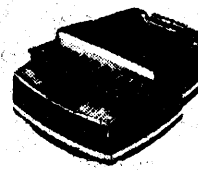
10 A Yes.

11 Q Would you briefly describe the contents of this
12 letter?

13 A Okay. this letter is a letter to Mr. Wendell Owen
14 that outlines the additional information that is needed to
15 address the modifications for the upper pad, the upper road
16 to that pad, and the scale house areas.

17 After a staff review of the information that he had
18 submitted previous to this time, it was still deficient.
19 And since this letter went out, Mr. Owen has submitted
20 another modification, which contains information from the
21 permanent program submittal, which was determined to be
22 deficient over a year ago. And we are waiting for a re-
23 sponse from Mr. Owen so that we can continue with the
24 review of his overall permanent program permit application.

25 There is not--through our staff review, we have not



1 found a lot of information in there that is new informa-
2 tion that was requested over a year ago to bring these
3 modifications into compliance at this time prior to getting
4 a permit approval for the entire operation.

5 MS. DRISCOLL: I have nothing further of this
6 witness.

7 THE CHAIRMAN: Cross-examine.

8 CROSS-EXAMINATION BY MR. KINGSTON

9 Q Mr. Smith, you did receive additional information on
10 October 25, did you not?

11 A Yes. The day that I was writing this letter.

12 Q That additional information was not addressed in this
13 letter, was it?

14 A I indicated to Mr. Owen that we did not have time at
15 that moment to look at his submittal, but we would look at
16 the submittal; and if there was anything deficient in the
17 submittal that was addressed in here, we would inform him
18 of that.

19 Q Have you done that?

20 A We have started a review on that, and the review indi-
21 cated the information he dropped in my--on my desk that day,
22 October 25, was primarily a Xerox copy of the information
23 which he submitted in March of '81 for the permanent pro-
24 gram submittal which we determined after review was inade-
25 quate.



1 Q But it also contained new information, did it not?
2 A It may have contained some new information. I don't
3 know exactly what that information was. We have not had
4 time to fully evaluate that submission.

5 Q And your review has not been completed?

6 A That's correct.

7 MR. KINGSTON: I have no further questions.

8 THE CHAIRMAN: Redirect?

9 MS. DRISCOLL: Nothing at this time.

10 THE CHAIRMAN: Does the Board have any questions
11 of Mr. Smith or of Mr. Hooper?

12 JOSEPH HELFRICH,
13 called as a witness on behalf of the Division of Oil, Gas
14 and Mining, having been duly sworn, testified as follows:

15 DIRECT EXAMINATION BY MS. DRISCOLL

16 Q Mr. Helfrich, is it your opinion that the areas that
17 have been identified in the order to show cause have been
18 undertaken in violation of the statute and regulations?

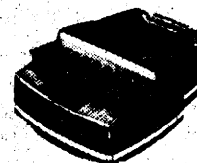
19 A That is correct.

20 Q Is it your opinion that the operator has been out of
21 compliance with the statutes and the regulations?

22 A Yes.

23 Q Is it your opinion that the operator could be held
24 liable for violation of the same?

25 A Yes.



1 MS. DRISCOLL: Nothing further of this
2 witness.

3 THE CHAIRMAN: Cross-examination?

4 MR. KINGSTON: No questions.

5 THE CHAIRMAN: Does the Board have questions?

6 MR. BECK: I have one. I don't quite know how to
7 put it. I think the evidence presented yesterday on this
8 new pad, this new undisturbed area, the work had been going
9 on for two years. Was that your understanding? Either one
10 of you?

11 MS. DRISCOLL: Joe can answer that.

12 MR. HELFRICH: Approximately. The operator may
13 be able to comment.

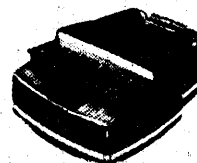
14 MR. BECK: I think the operator made the statement.
15 I think he made the statement yesterday that the work on the
16 road leading up to the pad had been undergoing work for two
17 years but just hadn't been completed.

18 MR. HELFRICH: That is correct.

19 MR. BECK: If I remember it. The thing that
20 bothers me is if this wasn't permitted two years ago, why
21 is it being cited as a violation now, when it should really
22 have been two years ago? Do we have an answer to that?
23 that's just a question to our staff.

24 MR. HELFRICH: I think the main intent is to try
25 to seek compliance without having to take enforcement action.

HELFRICH
↓



1 MR. BECK: All right. That's fine, then. But a
2 citation has been issued?

3 MR. HELFRICH: No. It has not.

4 MR. BECK: None has?

5 THE CHAIRMAN: That's what they're here asking the
6 Board to do.

7 MR. BECK: All right. But no citation has been
8 issued by our inspectors?

9 MR. HELFRICH: That is correct.

10 MR. BECK: All right.

11 THE CHAIRMAN: Further testimony or evidence,
12 Carolyn?

13 MS. DRISCOLL: Nothing.

14 THE CHAIRMAN: All right. Mr. Kingston, proceed.

15 MR. KINGSTON: Do you want Mr. Owen resworn?
16 He was sworn yesterday.

17 THE CHAIRMAN: No. That's fine. We remind you,
18 Mr. Owen, you're still under oath.

19 WENDELL OWEN,
20 recalled as a witness on behalf of Co-op Company, having
21 been heretofore duly sworn, testified further as follows:

22 MR. KINGSTON: I don't know whether you want this
23 formally marked. To save time, I don't think there's going
24 to be any dispute on what it is or what it represents.

25 MS. DRISCOLL: We stipulate.



NEW COTTON

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DIRECT EXAMINATION BY MR. KINGSTON

Q For the record, what is this map that I'm showing you?

A It is the area on the Bear Canyon permit area, the area covered by the Bear Canyon permit area. Basically it was taken from the lease, the property that we have leased on the Bear Canyon Mine and outlined as the permit area.

Q Is this a map that you submitted with your preliminary plan, or how did the Division get this map? When did you submit it?

A I can't remember exactly the date, but it was part of the preliminary plan, yes.

Q This area outlined in black, you say that is the permit area, that corresponds roughly with the lease ground?

A Yes.

Q Two of the alleged violations concern, number one, a new road; number two, a spring area. Can you point out for the members of the Board where the new road is located?

A That's right down here where the road--now, this here indicates the county road as it was. The new road is down here, the last--about, oh, maybe a quarter or a third of a mile. It simply moves over and enters the highway about 600 feet up the highway. So it's down right on the Huntington Canyon highway.

Q That's how far from your permit area, from your boundary?



1 A About a mile and quarter.

2 Q Could you also point out where the spring is located?

3 A The spring area, from what they can see of this map

4 from here, I'd say it's roughly about half way up there,

5 between the highway and the area marked in black.

6 Q About how far in feet or miles would that be from the

7 permit boundary?

8 A Well, it would be close to three-quarters of a mile,

9 between a half and three-quarters.

10 Q Is Co-op Mining Company doing any development work on

11 that spring?

12 A No.

13 Q Regarding, Mr. Owen, the contact you had with the

14 Emery County officials on the road--first, does Co-op Mining

15 Company have any interest in the land surrounding the--where

16 the road was changed?

17 A No.

18 Q Who owns that property, do you know?

19 A BLM.

20 Q Have you had any contact with the BLM people on the

21 change to the road?

22 A Yes.

23 Q When did you first contact them?

24 A That was almost a year ago.

25 Q Did you also contact the Emery County officials?

1 A I contacted the Emery County officials. The BLM went
2 through their processes, which takes a certain amount of
3 time; and they got almost to completion and came back and
4 says, "Our records show this to be a county road." And at
5 that time we contacted the county officials. Prior to that,
6 why, there was nothing indicated to us that it was a
7 county road.

8 Q Have you since talked to the county about whether or
9 not they claim that road?

10 A Yes.

11 Q What has been their response?

12 A They said they want to keep that in their county system.

13 Q Did you get their permission to change the road in
14 the manner it was changed?

15 A Yes.

16 Q One other area of an alleged violation concerns the
17 upper storage pad area. You're familiar, I guess, where
18 that is located?

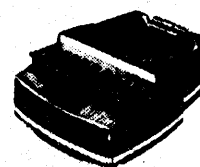
19 A Yes.

20 Q That's within the permit area?

21 A Yes.

22 Q When did you first address that area with any kind
23 of correspondence or maps or other types of correspondence
24 with the Divison?

25 A I'd say right--to begin with, it was discussed with



1 them. Now, because of a lot of my files being in Huntington,
2 there are some things that I could present that I didn't
3 have time to go down last night and come back up and get.
4 I'm not able to present actual letters, but this has been
5 under discussion, and there has been correspondence back and
6 forth on it. In fact, when Sandy Pruitt was inspecting, she
7 sent us a letter ordering us to get that culvert put into
8 place.

9 Q About when would that have been timewise? Date?

10 A That would have been a year ago. She and others made
11 several inspections of the area. Now, this would have been
12 even before that.

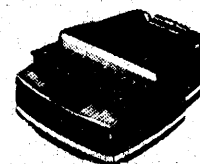
13 Q Let's go on to this. Now, this, for identification
14 purposes, to speed up the hearing, is something that was
15 submitted to the Division, and I think they'll acknowledge
16 that. We can have it marked as an exhibit if anybody
17 wants it marked.

18 MS. DRISCOLL: We'll stipulate.

19 Q (By Mr. Kingston) Mr. Owen, I'm going to show you what
20 is marked as Plot Plan and ask you if you can identify that.

21 A Yes. When we were building the road, we were informed
22 by the Division that there was a regulation that says that
23 you cannot sidecast materials if the slope is more than 20
24 degrees.

25 Now, I remember even being here before this Board on



1 that very issue, because I remember that being discussed on
2 this Board. And, like I say, I don't have the correspon-
3 dence here with me, but I remember that very thing coming
4 up in this Board, and there was a violation issued.

5 They say there was no violations on here, but there
6 was a violation issued, because we did not have the neces-
7 sary, oh, information here to prove--to take care of the
8 variance in that rule. They say there is a variance that
9 you can sidecast it, if you can show that the soil has a
10 stability of 1.5 or greater.

11 So in view of that violation--now, that violation is
12 made reference to in the letter that covers this--I con-
13 tacted an engineering firm, Dames & Moore. And Dames &
14 Moore went down there, made their study and all, and pre-
15 pared a report, along with this map.

16 Now, this map, as you can see, what they asked for was
17 a map that we had of the area, which they took. And then
18 they added their information to it here. You can see this
19 is a small map of the same one here that shows our pad area
20 and everything there. And they have added part of their
21 report to it.

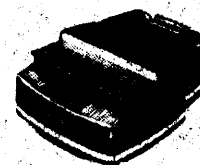
22 Now, this--

23 Q Just a minute, Mr. Owen. Does that include the dis-
24 turbed area where your pad is?

25 A The upper pad?



1 Q Yes. Does it also include the road area?
2 A It includes the entire road area.
3 Q And it shows that as being a disturbed area on that
4 plat?
5 A Yes.
6 Q That was submitted to Oil, Gas and Mining when?
7 I think it would be a good idea for the members of the
8 Board to review that. And we do have a cover letter that
9 goes with it, if you want to review that. And it is dated.
10 A Now, how much of this do you want?
11 Q Just give me the approximate date.
12 A February 10, 1981, was the date they submitted it to
13 the Division. So that their study would have been made,
14 the request and their study would have been previous to
15 that.
16 Q Did the Division acknowledge receiving that, the
17 letter along with the map?
18 A Yes.
19 Q When did their acknowledgment come down to you, do you
20 recall?
21 A I don't recall. And, like I say, the letter would be
22 in my file, which I didn't have a chance to--
23 Q Did the letter approve the submission?
24 A Yes.
25 Q And any kind of a change represented by that submission?



1 Q One other area that was covered. Where the scale
2 house is located, have you submitted anything to the
3 Division regarding disturbing the area where you intend to
4 put your scale house?

5 A Yes.

6 Q What have you submitted?

7 A I submitted a map that showed the scale house in that
8 area, which later had the contour lines added to it, and it
9 was resubmitted just recently. But that was--

10 Q Is that this map here that we have?

11 A Yes.

12 Q Does this map show where your scale house is going to
13 be located?

14 A Yes.

15 Q When was the first time to your recollection that you
16 submitted a map showing the scale house to the Division?
17 Was it before this, or was this the first time?

18 A That possibly was the first time when the first one
19 without the contour lines was submitted.

20 Q It would have been approximately what date; or how long
21 ago, if it's easier to state a date from today's date?

22 A Well, it would have been about two years ago.

23 Q And that would have had the scale house on it?

24 A Yes.

25 MR. KINGSTON: Again, we can have this marked



1 if anyone wants it marked, but the Division has also re-
2 ceived a copy.

3 Q (By Mr. Kingston) Regarding the letters and the cor-
4 respondence that the Division has referred to in previous
5 testimony, first, again, let's touch briefly the road area.
6 What official in Emery County did you discuss that with
7 principally.

8 A There were two different ones it was discussed with
9 extensively. One was Roger Curtis, who is the commissioner
10 who is the--I mean, one of them is kind of the lead commis-
11 sioner. He is the one that has that position. The other
12 one is Scott Johansen.

13 Q He's the county attorney?

14 A The county attorney.

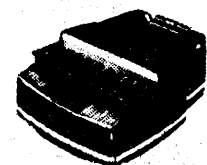
15 Q Did either one of those individuals tell you that they
16 would or would not be responsible for maintaining the road
17 after it had been changed?

18 A In a meeting held, Commissioner Curtis said that they
19 would maintain the road after we had, we or us in conjunc-
20 tion with Beaver Creek, if they would go in there, too, had
21 finished the road, that they would maintain it.

22 Q They asked you to build it, but they would maintain it?

23 A Yes.

24 MR. KINGSTON: I believe that covers all five
25 areas in a brief manner.



1 THE CHAIRMAN: Mr. Bell has a question.

2 MR. BELL: In relation to the road, reading the
3 letter and understanding that they did want their engineers
4 to look at it and inspect it, did they actually give you the
5 go ahead to build the road until they had an opportunity to
6 come up and engineer it? And, secondly, did they show you
7 where they had information from BLM that permitted them to
8 permit you to build the road?

9 THE WITNESS: This is going to take a little bit
10 of a story. I'll tell you exactly--

11 MR. BELL: I just want documents. I asked you,
12 did you have any letters, in other words, any letters
13 stating--for your own safety, did you have any documented
14 information other than verbal that you were permitted to go
15 ahead with the actual construction of the road before you
16 undertook the construction?

17 THE WITNESS: It was verbal.

18 MR. BELL: That's all I wanted to know.

19 THE CHAIRMAN: Further questions by the Board?

20 MR. NORMAN: If it was verbal, I assume that this
21 was at a regular county commissioners' meeting?

22 THE WITNESS: No. The verbal permission was given
23 by the county attorney. And it was given because of con-
24 cern. Now, having already met with the commissioners and
25 with BLM--and they had delayed it to a later date, and I

WITNESS
↓



1 was really concerned with the condition there, especially
2 with the fall season coming up, with the additional traffic--
3 it's a high recreation--it's very heavy traffic there--
4 there's a lot of miners that live over on the other side
5 of the mountain and come to work there. It's very heavy
6 traffic. And I've timed it from the time you can see a car
7 coming up around that corner until they arrive at that
8 road. It was two seconds. And yet we had trucks going in
9 and out, not only ours, but other trucks coming in and out.
10 And there was no--nothing whatsoever there in the way of
11 protection.

12 So I called the county attorney on the phone and
13 told him what the problem is and I says--in other words,
14 BLM had already done all the groundwork to okay it. The
15 Department of Transportation had already okayed it. And
16 they were just waiting, because when they decided it was a
17 county road waiting for county approval, I says: "Is there
18 any way, anything you can do as the attorney to speed this
19 up and get county approval through to BLM, so that we can
20 eliminate that hazard before there's an accident there?"

21 And he says, "I'll see what I can do." And he
22 called back that afternoon, and he says, "Well, when did
23 you want to start?" And I says, "We could start any time
24 that we get the okay."

25 So when he called back, he says, "I can get it



1 know

2 That's what this letter here says, that they are
3 still studying it and hadn't let us know yet if they wanted
4 any additional changes and that's where it stands.

5 The county, they did tell us to use it and did
6 tell us to block the old one off.

7 THE CHAIRMAN: Does that answer your question?

8 MR. NORMAN: Yes. You realize that BLM, what they
9 require on special use permit, for \$10 or \$15, and they
10 approve it--and on BLM land that's the way they operate.
11 You fill out a simple form.

12 THE WITNESS: I had filled out the form. I had
13 given them a check. I had hired an archaeologist to come
14 down there and make sure there was no archaeology distur-
15 bance. And after all that was done, BLM come back and
16 says: "Oh, we discovered it's a county road. The county
17 has to apply for it. And that's what we're waiting now is
18 for the BLM to go through it again and approve it for the
19 county."

20 MR. KINGSTON: I think the important point to
21 remember is that it is well off the permit area, and it's
22 used by anybody as a public road.

23 THE CHAIRMAN: Further questions?

24 MR. NORMAN: Has the old road been abandoned and
25 this is being used by the public now?

instructions
| erase "go" |

1 THE WITNESS: Yes. This one is being used by
2 the public. The old one, according to their instructions,
3 has been blocked off on the lower end. Since there are
4 power pole installations and Huntington City has their
5 water meter down there, they asked us to leave it open
6 at the top end, so that they could have that access by
7 coming up the new part and turning back down from the upper
8 end of the old road to have access to their installations
9 there. It's blocked off down at the bottom end by the
10 highway.

11 THE CHAIRMAN: Further questions? Do you have
12 cross, Carolyn?

13 CROSS-EXAMINATION BY MS. DRISCOLL

14 Q Just a few. Mr. Owen, is this map which was submitted
15 originally on a scale consistent with the maps that are up
16 on the blackboard?

17 A No.

18 Q Do the maps that are on the blackboard indicate the
19 permit boundaries?

20 A No.

21 Q So there is nothing that has been submitted that is in
22 evidence on the board that indicates what the Co-op Mining
23 Company's permanent boundaries are?

24 A No.

25 MS. DRISCOLL: Okay.



1 REDIRECT EXAMINATION BY MR. KINGSTON

2 Q Mr. Owen, each one of those maps does have boundary
3 markers--for instance, quarter sections, section lines--do
4 they not?

5 A Yes.

6 Q They also have a scale, so many inches equals so many
7 feet?

8 A Yes.

9 Q So, comparing the inches and feet with the boundary
10 markers on this, would it not be possible to determine the
11 boundaries on each one of those maps, at least fairly
12 accurately?

13 A Yes.

14 Q We also discussed with the Division this morning that
15 in the future any maps that we turned in, we would outline
16 in red the permanent boundary lines?

17 A Yes.

18 Q And you're willing to do that?

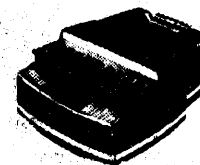
19 A Yes.

20 RE-CROSS EXAMINATION BY MS. DRISCOLL

21 Q Can you give me an indication of the width of the
22 boundary line that is represented on the map that's on the
23 table?

24 A The indication of the width of the line?

25 Q Of the width?



But | Driscoll

1 A No, I can't.

2 MR. McINTYRE: Do you want a scale to measure that
3 with?

4 Q (By Ms. Driscoll) I think we've adequately covered
5 the maps. But would you agree that there is nothing that
6 has been submitted on the maps that would indicate to the
7 Division's staff reviewing your plan where the permit bound-
8 dary is?

9 A Now, would you word that again?

10 Q Would you agree that there is nothing on the maps sub-
11 mitted to the Division today which would indicate the permit
12 boundaries for the mine?

13 A Other than the indication of where it is located as
14 far as its legal description and the scale of the map.

15 Q When you commenced road construction, did you notify
16 the Division prior to the construction?

17 A Commenced road construction?

18 Q Yes.

19 MR. KINGSTON: Which road, counsel?

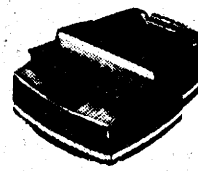
20 Q (By Ms. Driscoll) The one that adjoins the county
21 road.

22 MR. KINGSTON: Do you mean the change?

23 MS. DRISCOLL: The change.

24 A No.

25 Q (By Ms. Driscoll) When you commenced construction



development
↓
that the Division accepted that Dames
& Moore study as a demonstration
connection ↓

1 of the road to the portal, did you notify the Division prior
2 to the construction?

3 A Yes.

4 Q Did you receive a permit to do that?

5 A Yes.

6 Q With relation to the spring, do you have permit
7 boundaries on site indicating where the line permit termin-
8 ates--or the boundary?

9 A We are complying with the regulation that says we have
10 to have a sign where the nearest public road enters the
11 permit area.

12 Q Are there PVC pipes leading from that spring develop-
13 ment onto the mine permit area?

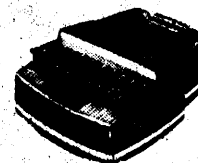
14 A No.

15 Q The Dames & Moore study was accepted by the Division,
16 and we will stipulate to that. Is it not true that the
✓ 17 Division accepted that Dames & Moore study as a demonstration
18 of the stability factor of 1.5?

19 A Yes.

20 Q In connection with the scale house that you indicated
21 is depicted in the Dames & Moore study, did you submit any
22 information, any narrative, regarding the construction of
23 the scale house?

24 MR. KINGSTON: Excuse me. I believe you're con-
25 fusing the scale house with the upper pad area. The Dames



1 & Moore study concerned the pad area.

2 Q (By Ms. Driscoll) I stand corrected. Have you sub-
3 mitted any narrative regarding the pad that's depicted in
4 the Dames & Moore study?

5 A I can't remember for sure without files to go through.

6 Q Do you recall submitting any narrative on any of these
7 areas to the Division prior to commencing mining activity?

8 A Yes.

9 Q Have you addressed reclamation of these areas prior to
10 doing your mining activities?

11 A I haven't specified any particular area or addressed
12 reclamation on the entire area.

13 Q Have you bonded these areas? These areas are bonded?

14 A Yes.

15 MS. DRISCOLL: I have nothing further.

16 THE CHAIRMAN: Redirect?

17 MR. KINGSTON: No redirect.

18 THE CHAIRMAN: Do you have any other evidence
19 otherwise you want to call at this time?

20 MR. KINGSTON: The only other question that's not
21 in the nature of redirect is to the question just asked by
22 Carolyn.

23 REDIRECT EXAMINATION BY MR. KINGSTON

24 Q Are you willing to comply with these letters which
25 requested additional information, Mr. Owen?

Grade "FURTHER"
↓
REDIRECT/RE-DIRECT



1 A Yes.

2 Q Have you done your best to supply that information?

3 A Yes.

4 Q Do you feel like you've worked diligently to do that?

5 A Yes.

6 Q Do you intend to continue to work diligently until you
7 have resolved all of these problems with the Division?

8 A Yes.

9 Q Are you willing to spend such time as is necessary to
10 comply with their deadlines, as long as they're reasonable?

11 A Yes.

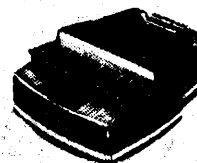
12 MR. KINGSTON: No further questions.

13 THE CHAIRMAN: Do you want to offer closing argu-
14 ments, Carolyn, or do you have any rebuttal evidence?

15 MS. DRISCOLL: I have no rebuttal evidence. As
16 far as a closing statement, I'll just submit it very briefly.

17 The staff has for a period of time worked with the
18 operator and has not taken stringent enforcement action, in
19 order to assist the operator coming into compliance. It's
20 the staff's opinion that at the present time--well both
21 times--initially, when the activities that are identified in
22 the order to show cause were initiated and commenced, the
23 operator had not permitted these areas, had not addressed
24 reclamation nor bonded these areas.

25 At the current time it is the Division's position



activities

Recommend

1 that the operator has not permitted these areas. The
2 operator has stopped, we understand, activity on these
3 areas, and we do appreciate that.

4 However, the Division would recommend that a time
5 definite be established for the operator to submit all nec-
6 essary documentation to comply with the permitting process,
7 and we would like the Board to establish that time frame.

8 The other thing that we would like to Board to
9 consider is a date certain when enforcement and inspection
10 activities can commence out there without being unduly
11 burdensome either to the operator or to the staff.

12 THE CHAIRMAN: What can commence?

13 MS. DRISCOLL: Inspection and enforcement.

14 THE CHAIRMAN: Would they be the same day, pre-
15 sumably, or the day after--would the one follow the other?

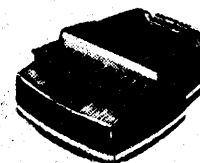
16 MS. DRISCOLL: The one would follow the other.

17 THE CHAIRMAN: Is that all?

18 MS. DRISCOLL: The third thing that the Division
19 is asking the Board to consider is whether or not the
20 operator has been in violation of its approved permit, which
21 is an interim permit; and, if so, should the Board consider
22 taking enforcement action?

23 THE CHAIRMAN: As to all five of the elements
24 previously discussed?

25 MS. DRISCOLL: All five or any one individually.



1 THE CHAIRMAN: All right. Anything further?

2 MS. DRISCOLL: Nothing further. Thank you.

3 THE CHAIRMAN: Mr. Kingston?

4 MR. KINGSTON: I think the problem we've got in
5 this case is a real communication problem. I have repre-
6 sented Co-op Mining Company for a number of years, both
7 before the Division, before MSHA, and other agencies. I
8 myself am amazed that a letter can go from one party to the
9 other that will be completely misinterpreted.

10 That There seems to be absolutely no way that the two
11 sides can agree that the same words have the same meaning.
12 That has been the problem. It's simply a communication
13 problem.

14 Now, regarding the original plan that was sub-
15 mitted by Mr. Owen, not to belabor the point, but Co-op
16 Mining Company operated first in Trail Canyon, they ran
17 out of coal. They have had to go over into Bear Canyon to
18 keep the operation alive.

19 When they first went over there, they were under
20 a deadline to submit their plan. At that time they weren't
21 in Bear Canyon. They didn't know what they wanted, where
22 they wanted the scale house, what facilities they were
23 going to need. They couldn't therefore, tell the Division
24 exactly where these had to be located.

25 I'll be the first to admit that there have been



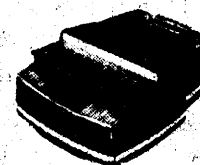
1 some things lacking in what has been submitted by Co-op
2 Mining Company to the Division.

3 I do want to say for the record that I appreciate
4 the Division, because I do think that they have attempted
5 to work with Co-op Mining Company, but there has been a
6 communication problem there that I think has been quite
7 serious. We've spent several afternoons discussing on the
8 phone, in person. They have been down there. We've come
9 up here. We've tried to work these things out.

10 I think the problem arises that Co-op Mining
✓ 11 people are miners. I don't think there is a person down
12 there that has any kind of a college education or back-
13 ground. They're attempting to do this on their own. They
14 don't have the geologist, the hydrologist, the engineers,
15 that the big companies have.

16 Now, maybe your response might be: "Well, they
17 ought to go out and hire these people." But they can't,
18 because they don't have the funding. I think they're the
19 only independent coal mine operator left in Utah. They are
20 a small mine attempting to survive. Whether or not they
21 would be further ahead to hire the experts to do their
22 work--they are trying to pay the fines resulting from their
23 own ineptitude--I don't know. I can't answer that question
24 for them.

25 I believe the order to show cause hearing is not



1 appropriate at this time. The way I read that--and, again,
2 I'm not sure what section we're proceeding under--is that
3 for an order to show cause issue they've got to show that
4 the violations have been willful or unwarranted. I don't
5 think they will even claim that they are either willful or
6 unwarranted.

7 There have been some deficiencies. We'll be the
8 first to admit that; but we will in good faith attempt to
9 the very best of our ability to comply. We've got to know
10 what it is. As far as setting a deadline, we can submit
11 these things to the Division, but they're going to have to
12 respond. There's a time period there in which they're going
13 to have to do that. We can't give them anything more until
14 they respond and tell us where we're lacking; and because
15 of the burdens I've explained previously, they can't read
16 the regulations and say, "This is exactly what we've got to
17 have," and give it to them all at once. It just doesn't work
18 that way. That would be the ideal situation, but it's just
19 not the fact.

20 THE CHAIRMAN: Anything further? Any rebuttal?

21 MS. DRISCOLL: No rebuttal.

22 THE CHAIRMAN: Thank you. I suppose we'll want
23 to take this under advisement, and we'll try to get back to
24 you today with a decision.

25 (At 2:25 p.m. the hearing recessed.)



1 THE CHAIRMAN: The next item on the Agenda
2 is Agenda Item No. 5, in the matter of an order to show
3 cause issued to Co-op Mining Company.

4 If I can recall--tell me if I'm off base--I think
5 that a motion is in order to find no violation on (a) and
6 (e) of the order to show cause, but to find a violation on
7 (b), (c) and (d), with a direction to Mr. Daniels on the
8 staff to assess appropriate penalties on the violations
9 found.

10 MR. NORMAN: That is my motion, Mr. Chairman.

11 THE CHAIRMAN: Is there a second to that
12 motion?

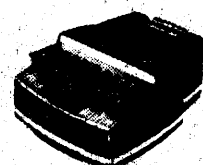
13 MR. McINTYRE: I'll second the motion.

14 THE CHAIRMAN: It's been moved and seconded.
15 Discussion on the motion?

16 All in favor say aye. Opposed?

17 Carries.

18 (At 4:18 p.m. the hearing recessed.)
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THE CHAIRMAN: The next item on the agenda is
Agenda Item No. 6, which is in the matter of the application
for review and hearing by Co-op Mining Company regarding an
issued mining violation.

5

MR. DANIELS: Did you want to mention the date to
comply in that motion or order to the previous part?

7

THE CHAIRMAN: Yes. That's right. That should
go in the previous one and I would appreciate that.

9

Before we consider Item No. 6, I think we now need a new
motion that the date of November 29 be transmitted to
Co-op Mining Company as the date written wherein compliance
is required for the items mentioned in the letter dated
October 25 from the staff to Co-op Mining.

14

MR. McINTYRE: I will make the motion that
November 29, 1982, be the date set for Co-op Mining.

16

THE CHAIRMAN: To comply with those terms and
conditions described in the letter of October 25.

18

MR. BELL: I'll second the motion.

19

THE CHAIRMAN: It's been moved and seconded.
Discussion on the motion?

21

All in favor say aye. Opposed? Thank you.

22

We might just for the record represent that
enforcement should occur on a continuing basis as to any
existing violations and inspection should occur on a
continuing basis for any problems that may exist without

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regard to November 29.

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However, those items mentioned in the October 25 letter, of course, receive that special consideration that they have until November 29, prior to any enforcement jeopardy.

(At 4:19 p.m. the hearing concluded.)

ERASE-ABLE INK

25, COTTON



C E R T I F I C A T E

State of Utah)
)ss.
County of Salt Lake)

I, Ronald F. Hubbard, do hereby certify that I
am a certified shorthand reporter and notary public in and
for the State of Utah; that as such reporter I attended
the above-entitled matter and thereat reported in shorthand
all the testimony, evidence and proceedings had therein;
that thereafter I caused to be transcribed my said shorthand
notes into typewriting, and the foregoing constitutes a
full, true and correct transcription of the same, to the
best of my ability.

Dated at Salt Lake city, Utah, this 22nd day
of November, 1982.

Ronald F. Hubbard
Ronald F. Hubbard
Certified shorthand Reporter
License No. 32

My Commission Expires:

8-25-85

